

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

BOBBY BOSTIC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 1:05CV00118 ERW
	)	
GLEN BABICH et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court upon Plaintiff's Motion for Reconsideration [doc. #39], Motion for Leave to File an Amended Complaint [doc. #40], and Plaintiff's Motion to Appoint Counsel [doc. #41]. Defendants oppose Plaintiff's Motions.

Plaintiff requests that he be permitted to file an Amended Complaint in this case, joining an additional defendant. Specifically, Plaintiff wishes to add Thomas Shanfelter, whom he alleges has denied him access to a medically necessary non-bean diet, causing his medical condition to worsen, in violation of his constitutional rights. Leave to amend a complaint "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Absent good reason for denial, such as undue delay, dilatory motive, undue prejudice, or bad faith, a request for leave to amend should be granted. *Thompson-El v. Jones*, 876 F.2d 66, 67 (8th Cir. 1989). Plaintiff's request is made early in this case, and there is no indication that the request is the result of undue delay, dilatory motive, or bad faith. Therefore, Plaintiff's Motion for Leave to File an Amended Complaint will be granted. Plaintiff's Amended Complaint, which has been submitted as an attachment to his Motion for Leave to File an Amended Complaint, is accepted for filing by this Court.

Plaintiff also requests that this Court appoint counsel to represent him in this matter. Under 28 U.S.C. § 1915(e)(1), the Court may request an attorney to represent any person unable to afford counsel. An indigent pro se prison litigant who has met his burden of showing his complaint not to be frivolous should be appointed counsel where necessary. *Johnson v. Williams*, 788 F.2d 1319, 1322 (8th Cir. 1986). Nonetheless, in enacting 28 U.S.C. § 1915, Congress did not intend to license compulsory appointments of counsel. *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 301 (1989). Several factors are relevant to the decision to appoint counsel in a civil case. In addition to factual complexity, a district court “should also consider the ability of an indigent to investigate the facts, the existence of conflicting testimony, the ability of an indigent to present his claim, and the complexity of the legal issues.” *Johnson*, 788 F.2d at 1322-23 (citations and quotations omitted).

The Court has reviewed the file and, in light of the standards detailed above, the Court does not believe that appointment of counsel is presently warranted in this case. The overall factual and legal complexity is insufficient to warrant an appointment of counsel. Plaintiff will not be required to engage in an overly-burdensome factual investigation, and this is not a case where Plaintiff and the Court would benefit greatly from the appointment of counsel. Therefore, the Court will deny Plaintiff’s Motion for Appointment of Counsel.

Finally, because the Court already has addressed those matters raised in Plaintiff’s additional Motion for Reconsideration, the Court will deny the Motion for Reconsideration as moot.

Accordingly,

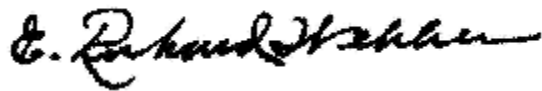
**IT IS HEREBY ORDERED** that Plaintiff’s Motion to Amend Complaint [doc. #40] is **GRANTED**. Plaintiff’s First Amended Complaint is accepted for filing by this Court.

**IT IS FURTHER ORDERED** that the Clerk shall issue process or cause process to issue upon the Amended Complaint as to Defendant Thomas Shanfelter.

**IT IS FURTHER ORDERED** that Plaintiff's Motion to Appoint Counsel [doc. #41] is **DENIED**.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Reconsideration [doc. #39] is **DENIED as moot**.

Dated this 16th day of May, 2006.



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E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE